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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,428	04/03/2006	Masaaki Fukuyasu	ADT315	7570
23581 7590 09/06/2007 KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			EXAMINER RODRIGUEZ, RUTH C	
			ART UNIT 3677	PAPER NUMBER
			MAIL DATE 09/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/574,428

Applicant(s)

FUKUYASU ET AL.

Examiner

Ruth C. Rodriguez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d) or (f), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 03 April 2006 has been considered for this Office Action.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 includes the limitation "a property of retaining a fixed shape of 95 percent or less". This limitation renders the claim indefinite because it is unclear how the twist tie will not retain a fixed shape of 95 percent or less as claimed. It is unclear whether

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the twist tie is constantly moving in order to not to retain a fixed shape of 95 percent or less or whether the 95 percent of the fixed shape is being determined with respect to a particular shape. Especially since the claim does not contain details on how the retention of 95 percent or less is determined. Finally, the claim does not provide any details of the timeframe used to determine this retention or whether the claim limitations are met while a user is deforming the twist tie.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kincel et al. (US 6,372,068).

A ribbon-shaped nonmetallic twist tie has a core part and a wing part constituted from a non-halogenous material (C. 5, L. 17-67 and C. 6, L. 1-46). The core part and the wing part each extend a length of the tie. The twist tie has a total width of 1.5 to 20.0 mm, a maximum thickness of the wing part of 0.02 to 0.20 mm and a maximum

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thickness of the core part of 0.04 to 0.3 mm (C. 7, L. 59-64, and C. 8, L. 118-243-17 and 41-45). A property of retaining a fixed shape of 95 percent or less (when the twist tie is being twisted it does not retain its original fixed shape or the fixed shape can be taken as the twisted tie after being twisting and the retention of 95 percent or less is determined from the additional deformation that the twist tie will experience after being released by the user until the tie settles).

7. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Contreras et al. (US 7,011,879).

A ribbon-shaped nonmetallic twist tie has a core part and a wing part constituted from a non-halogenous material (C. 4, L. 37-60 and C. 5, L. 13-17). The core part and the wing part each extend a length of the tie. The twist tie has a total width of 1.5 to 20.0 mm, a maximum thickness of the wing part of 0.02 to 0.20 mm and a maximum thickness of the core part of 0.04 to 0.3 fold of the total width (C. 5, L. 33-41). A property of retaining a fixed shape of 95 percent or less (when the twist tie is being twisted it does not retain its original fixed shape or the fixed shape can be taken as the twisted tie after being twisting and the retention of 95 percent or less is determined from the additional deformation that the twist tie will experience after being released by the user until the tie settles)..

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kincel et al.

Kincel discloses a twist having all the features mentioned above for the rejection of claim 1. Kincel discloses the twist tie has a drawing-out property where a degree of curving of the drawing-out direction is 10 degrees or less (C. 6, L. 25-32). Kincel fails to disclose that the twist tie has a torsion strength of 5 to 15 N, a tensile strength of 5,000 to 30,000 Mpa, a property of forming a fixed shape of 90 percent or more and a property of retaining a fixed shape is of 70 to 95 percent and a curl radius to the winding direction retains the range of 50 to 200 mm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the twist tie is capable of having a torsion strength of 5 to 15 N, a tensile strength of 5,000 to 30,000 Mpa, a property of forming a fixed shape of 90 percent or more and a property of retaining a fixed shape is of 70 to 95 percent and a curl radius to the winding direction retains the range of 50 to 200 mm since the twist tie meets all the structural limitations and is made from the same materials being claimed. Especially since the main objective of Kincel is

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to obtain a twist tie resisting untwisting and the claims do not provide any structural detail that will provide the claimed parameters when compared to the prior art.

### ***Response to Arguments***

10. Applicant's arguments filed 21 August 2007 have been fully considered but they are not persuasive.

11. The Applicant provides arguments against the rejection of claims 1-5 under 35 U.S.C. 112 2<sup>nd</sup> paragraph for the limitation "a property of retaining a fixed shape of 95 percent or less" in pages 6 through 9 of the response received on 21 August 2007. The Applicant argues that the specifications contain a detailed explanation on how this percentage is determined. This argument fails to persuade because the claim does not contain any details of what is a fixed shape and how the twist tie is able to retain 95 percent or less of the fixed shape. Claims 1-5 will remain rejection under 35 U.S.C. 112 2<sup>nd</sup> paragraph as failing to particularly point out the Applicant's invention until the claims are amended to include additional details on how the twist tie will retain 95 percent or less of the fixed shape.

12. The Applicant argues that Kincel et al. and Contreras et al. fails to disclose the claimed invention because both references fail to disclose "a property of retaining a fixed shape of 95 percent or less". The Examiner fails to be persuaded by this argument because although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988



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F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, the claims only require a tie that retains 95 percent or less of a fixed shape without describing what the fixed shape is or how the retention is determined. The newly provided rejection for the claims provides two examples of what can be considered "a property of retaining a fixed shape of 95 percent or less", although additional interpretations can be given. Especially since claims in a pending application should be given their broadest interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974). Claim 1 will remain rejected until additional details are provided in the claim to define what is "a property of retaining a fixed shape of 95 percent or less" and Kincel et al. and Contreras et al. can not be used to meet the claimed limitations.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C. Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/RCR/  
Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

/James R. Brittain/  
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rcr  
August 31, 2007